

## APPENDIX.

### Statutes Involved.

The statute which permits the compromise of internal revenue cases (U. S. C. sec. 1661) as it existed in the year 1935 read as follows (See 1934 Official Edition U. S. C. Sec. 1661):

“Sec. 1661. Compromises.

“(A) Authorization. The Commissioner, with the advise and consent of the Secretary, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advise and consent of the said Secretary, and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. (R. S. Sec. 3229.)

“(b) Record. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

“(1) The amount of tax assessed.

“(2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and

“(3) The amount actually paid in accordance with the terms of the compromise. (R. S. Sec. 3229; Feb. 26, 1926, c. 27, Sec. 1201, 44 Stat. 126; May 10, 1934, c. 277, Sec. 412(b), 48 Stat. 759.)”

It was not until the Act of February 10, 1939,<sup>4</sup> when Congress enacted the Internal Revenue Code that this Stat-

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<sup>4</sup> In 1938 the statute was also amended but merely to dispense with the necessity of consent by the Secretary of the Treasury and provide that an Assistant Secretary might consent. See Conference Report 75th Cong. Senate Document No. 177, p. 21. If Congress had intended at that time

ute was changed to read as follows (U. S. C. Supp. V, Title 26, Sec. 3761):

"Sec. 2761. Compromises.—(a) Authorization. The Commissioner, with the approval of the Secretary or of the Under Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense. (53 Stat. 462.)

"(b) Record. Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

"(1) The amount of tax assessed.

"(2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and

"(3) The amount actually paid in accordance with the terms of the compromise." \* \* \*

Section 3770 (a) (2) of the Internal Revenue Code reads as follows:

"Assessment and collection after limitation period.—Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim."

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that the Attorney General might have made a compromise it would have said so. It was not until 1939 that the law so provided. We note the statement of the Congressional Committee that the code did not change the law but the Statute as it existed in 1935 and as it appeared in the Code shows it was changed.

The applicable part of executive order No. 6166 (quoted in opinion of the court below, R. 33) is as follows (U. S. C. Title 5, sec. 132) :-

“As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of deciding whether and in what manner to prosecute, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.”

(4013)

